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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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JOHN HENRY MICHAEL McKEVITT,

Plaintiff,

-against-

ROBERT S. MUELLER, III, DIRECTOR, FEDERAL BUREAU  
OF INVESTIGATION an agency of the UNITED STATES  
DEPARTMENT OF JUSTICE; and ROBERT M. HOLLIS,  
DIRECTOR, OFFICE OF INTERNATIONAL JUDICIAL  
ASSISTANCE of the UNITED STATES DEPARTMENT OF  
JUSTICE; and ERIC HOLDER, ATTORNEY GENERAL of the  
UNITED STATES; and the UNITED STATES DEPARTMENT  
OF JUSTICE; and the FEDERAL BUREAU OF  
INVESTIGATION,

Defendants.  
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: **Case No. 09-CIV-3744**  
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: **ECF CASE**  
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: **COMPLAINT FOR**  
: **DECLARATORY**  
: **JUDGMENT AND**  
: **INJUNCTIVE**  
: **RELIEF**

: 28 U.S.C. § 1782(a)  
: 5 USC § 552  
: 28 USC § 1361  
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**PLAINTIFF'S COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff John Henry Michael McKevitt ("Michael McKevitt" or "the  
Plaintiff"), by and through his attorneys, Dornan & Associates PLLC, as and for a  
Complaint against the above-named defendants (the "Defendants"), hereby moves the  
Court for a Declaratory Judgment and Injunctive Relief pursuant to the Hague

Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Convention”) at 28 U.S.C. § 1782(a); as well as the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and/or for a Writ of Mandamus pursuant to 28 U.S.C. § 1361, and in support of his Complaint alleges as follows:

### **I. NATURE OF THE ACTION**

1. This is a civil action brought pursuant to Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 28 U.S.C. §§ 1781, 1782, as well as the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and further pursuant to 28 U.S.C. § 1361 for declaratory judgment and injunctive relief to redress the rights and privileges owed by Defendants to Plaintiff. In particular, Plaintiff seeks an Order to compel Defendants, and those acting under them, to produce agency records improperly withheld from Plaintiff as set forth in the Request for International Judicial Assistance (“Letter Rogatory”) issued on Plaintiff’s behalf under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, as codified at 28 U.S.C. §§ 1781, 1782. See Request for International Judicial Assistance along with supporting documents “SCM1” and “SCM2” attached hereto at **Exhibit A**.

2. Defendants have failed to produce any of the documents requested, and have asserted blanket exemptions to production of all documents requested pursuant to 5 U.S.C. § 552(b). **Exhibit B**.

3. The jurisdiction of this Court in this action is asserted pursuant to 5 U.S.C. § 553 as well as 28 U.S.C. § 2201 (declaratory judgment proceedings), and 28 U.S.C. § 1782(a) (assistance to foreign and international tribunals and to litigants before such tribunals).

4. Plaintiff seeks to obtain the release of records on a matter of significant public concern, namely, records withheld by the Federal Bureau of

Investigations (“FBI”) pertaining its policies, procedures and practices for engaging confidential sources who may have violated Federal criminal laws. In particular, Plaintiff seeks documentation of the FBI’s payments to, and communications with, a source and cooperating prosecution witness, who no longer remains confidential. *See McKevitt v. Pallasch*, 339 F.3d 530, 523 (7th Cir. 2003) [“There is no conceivable interest in confidentiality in the present case. Not only is the source (Rupert) known, but he has indicated that he does not object to the disclosure of the tapes of his interviews to McKevitt”].

5. It should be noted from the outset that Plaintiff does not seek any information regarding the whereabouts of the source, or any identifying information which could potentially reveal his whereabouts, all of which could readily be redacted.

6. Rather, Plaintiff seeks documentation which goes to the credibility of the source, whose sworn testimony was, and continues to be, a matter of significant public concern. Plaintiff is entitled to the documents requested in the Letter Rogatory and Defendants are obliged by law to release the documentation requested absent specific exemptions. 5 U.S.C. §552(b), 28 U.S.C. § 1782(a).

7. Plaintiff is an individual and resident of Ireland. See Affidavit of Michael McKevitt attached hereto at **Exhibit C**. Plaintiff is a named defendant in the civil matter of Breslin et al v. McKevitt et al (QBD, 2001 No. 3918), which currently is pending before the High Courts of Justice in Northern Ireland. *Id.*

8. Plaintiff’s claim arises under the assistance to foreign and international tribunals and to litigants before such tribunals at 28 U.S.C. § 1782(a) whereby the district court of the district “in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. Such an order may be made “pursuant to a Letter Rogatory issued, or request made, by a foreign or international tribunal or

upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.”

9. Plaintiff also has a cause of action pursuant to 5 U.S.C. § 552(a)(1)(4)(B), which permits judicial review to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

10. Plaintiff’s claim further arises under 28 USC § 1361 for a writ in the nature of mandamus to compel the Defendants, and those acting under them, to perform the duty they owe to Plaintiffs, namely, to provide the information requested in the Letter Rogatory.

11. Robert S. Mueller III is the Director of the Federal Bureau of Investigation (“FBI”), an agency of the Department of Justice (“DOJ”). Robert M. Hollis is Director of the Office of International Judicial Assistance, an office of the Department of Justice. Eric Holder is the Attorney General of the United States. The FBI is the agency which has possession of the information requested in the underlying Letter Rogatory. The DOJ has authority to provide assistance to international judicial tribunals, and the DOJ was the department which responded to the Letter Rogatory. All Defendants are sued herein in their official capacities.

12. Despite the DOJ having received the Letter Rogatory on September 17, 2008, with further clarifications to direct the request to the FBI on November 3, 2008, and despite the Defendants’ knowledge that the documentation was required to assist the High Court in Northern Ireland in a high-profile civil proceeding, Defendants failed to provide any of the requested documentation, contrary to its

obligations under 5 USC § 552, but instead asserted a number of blanket exemptions in response to each individual request on March 5, 2009.

13. Plaintiff will seek to demonstrate that he has a statutory right to the records requested, and that there is no legal basis for Defendants' failure to disclose the records requested in full. Moreover, Defendants' withholding of records is unlawful, as they have knowingly and willingly delayed production of the requested information, have interposed unlawful exemptions, and have caused unreasonable delay in order to frustrate Plaintiff's defense.

14. As Plaintiff's request for documents by way of Letter Rogatory has been denied by Robert M. Hollis, the DOJ director of the Office of International Judicial Assistance, Plaintiff has constructively exhausted all administrative remedies pursuant to 5 USC § 552(a)(6)(C) prior to filing this Complaint, and prays to the Court for an Order compelling disclosure. There is no statutory deadline by which Plaintiff's request for a declaratory judgment application must be filed.

## **II. JURISDICTION AND VENUE**

15. This Court has both subject matter jurisdiction over this action as well as personal jurisdiction over the parties pursuant to 5 USC § 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction pursuant to 28 USC § 1782(a), as well as 28 USC § 1331(federal question), § 1346(a)(2) [United States as Defendant].

16. Venue in this District is proper pursuant to 5 USC § 552(a)(4)(B), 28 U.S.C. § 1391(e) and 28 USC§ 1402(a). Pursuant to 28 U.S.C. § 1391(e) a civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be

brought in any judicial district in which (1) a defendant in the action resides, or (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property is involved in the action

17. Many of the events or omissions giving rise to the claims in this suit arose in this District, and the source of the requested information had businesses and a residence in this District. Defendants FBI and DOJ have offices in this District.

### III. FACTS AND PROCEDURAL HISTORY

18. Plaintiff is a native and citizen of the Republic of Ireland, and currently is incarcerated at Portlaoise Prison, Co. Laois, Ireland following his conviction in that jurisdiction's Special Criminal Court on August 6, 2003 of two offences, namely, "membership of an illegal organization" and "directing terrorism" between August 29 1999 and October 23, 2000<sup>1</sup>. Plaintiff was the first person ever to be convicted of the latter offence in that jurisdiction<sup>2</sup>.

19. Plaintiff is a defendant in Breslin et al v. McKeivitt et al (QBD, 2001 No. 3918), a civil claim brought by the families and relatives of individuals who died or were injured in a paramilitary car bomb attack on August 15 1998 in Omagh, County Tyrone, Northern Ireland. Exhibit B, ¶1. The attack reportedly was carried out by the Real Irish Republican Army ("Real IRA"), described as "a splinter group of

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<sup>1</sup> <http://www.guardian.co.uk/uk/2003/aug/08/northernireland.ireland> "Real IRA Leader Gets 20 Years." August 8, 2003.

<sup>2</sup> *Id.*

former Provisional Irish Republican Army members opposed to the Good Friday Agreement”<sup>3</sup>.

20. The complaint in the aforementioned civil action alleges that Plaintiff was responsible both personally and as a leader of the Real IRA for the deaths of 29 people and the injuries of many more. Exhibit B, ¶2.

21. A key witness for the prosecution in Plaintiff’s criminal trial was Mr. David Rupert (“Rupert”), described as a “New York businessman,” who admitted in court that he was a paid operative/agent of the FBI and of the British intelligence agency, MI5<sup>4</sup> who claimed to have infiltrated the Real IRA on behalf of those agencies. Exhibit B, ¶5.

22. Rupert was also listed as a witness in the underlying civil trial pertaining to which the Letter Rogatory was issued. Exhibit B, ¶6. Due to concerns for his safety the court acceded to a request that he give evidence via video link, thus avoiding the need for him to attend in person at the trial. *Id.*

23. The plaintiffs in the Northern Ireland civil court action subsequently were informed by the FBI that Rupert would no longer be giving evidence at the civil trial. *Id.* In light of this, the civil plaintiffs successfully applied to the Court to have Rupert’s statements and e-mails adduced under the hearsay provisions in Northern Ireland. *Id.* Accordingly, Rupert’s statements and e-mails have been adduced as part of the plaintiffs’ case, but Plaintiff’s representatives were prevented from conducting a cross-examination of Rupert. *Id.*

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<sup>3</sup> [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/focus/153629.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/focus/153629.stm) “Real IRA Apologises for Omagh Bomb.”

<sup>4</sup> <http://www.guardian.co.uk/uk/2003/aug/07/northernireland> “McKevitt Sentenced to 20 Years.” August 7, 2003.

24. In order to deal with this serious disadvantage, Plaintiff sought disclosure of the material listed attached to the Letter Rogatory at SCM2. *Id.*

25. As set forth at SCM2, attached to the Letter Rogatory, Plaintiff had requested certain documentation relating, *inter alia*, to Rupert's work for, and payments by, the FBI and other agencies, including his tax return records and records of meetings and communications with the FBI. Exhibit A, SCM2.

26. More particularly, Plaintiff seeks records of meetings between the FBI and Rupert; records of assessments of Rupert as an agent; records of all materials concerning his credibility; communications between the FBI and Rupert concerning evidence in the current civil trial; records of contact between the FBI and the Inland Revenue Service concerning Rupert's tax affairs; records of FBI's assistance in settling Rupert's tax liabilities; records regarding Rupert's payment or failure to pay taxes on monies paid to him by the FBI / MI5; records of payments made by the FBI to Mr Rupert subsequent to the Plaintiff's criminal trial; financial assistance or payments paid to Rupert or on his behalf to anyone concerning Rupert's business in the Republic of Ireland; communications between the FBI and Rupert regarding a proposed book contract; forensic copy of email traffic between Rupert and MI5; copies of documents and recordings sent by Rupert to FBI Agents; communications/ correspondence between FBI and An Garda Siochana (Irish police) regarding Rupert's deployment in Ireland; statements made by Rupert in the possession of the FBI, and details of witnesses to statements; documents pertaining to any authorization that was applied for or granted for Rupert to be deployed as an agent/ operative in the United States of America, England, N. Ireland or the Republic of Ireland; photographs shown to Rupert by FBI Agent Buckley,



and details of how and when the FBI came into possession of the photographs; details of whether Rupert was ever employed or tasked by the FBI or other government agency to collect information; details of whether Rupert was ever in a witness protection scheme in the United States of America prior to his deployment in Ireland; telephone records held by the FBI in relation to any telephone held by Rupert; medical records pertaining to Rupert; and FBI guidelines on the handling of international informants /operatives.

27. Plaintiff believes this information is not only pertinent to the defense of his civil action, but is essential to his challenge of the witness's credibility.

28. Plaintiff submits that the information requested pertains to a matter of significant public concern, namely, payments and communications between Federal authorities and an individual with an extensive criminal record, leading to a conviction on a charge of "directing terrorism," based largely on the testimonial evidence of said individual.

29. Plaintiff has experienced considerable delays in the DOJ and FBI's processing of his Hague Convention request. The response to the Letter Rogatory was delayed for six months, and finally blanket exemptions were interposed for each request.

**Exhibit B.** It is submitted that such exemptions upon which the FBI relies, which Plaintiff submits are unavailing, nevertheless could readily have been asserted much earlier. The actions of the DOJ and FBI have merely served to delay the civil proceedings.

30. Having exhausted all administrative remedies pursuant to 5 USC §552(a)(6)(C), Plaintiff now seeks the intervention of the Honorable Court to compel Defendants to release the documentation requested.

#### IV. PARTIES

31. At all times relevant to this Complaint, Plaintiff John Henry Michael McKevitt was a resident of the Republic of Ireland.

32. Upon information and belief, the source of generation of the documentation requested, David Rupert, described as “a New York businessman<sup>5</sup>,” owned and operated business in the State of New York, was a former resident of the State of New York, and many of the events and documents pertaining to the Letter Rogatory have significant connections to the State of New York

33. Defendant Robert Mueller, III is the Director of the Federal Bureau of Investigation (“FBI”), an agency of the United States Department of Justice; and Robert M. Hollis is Director of the Office of International Judicial Assistance of the United States Department of Justice (“DOJ”); Eric Holder is the Attorney General of the United States. All Defendants are sued herein in their official capacities, except for the DOJ and the FBI. Defendants are custodians of the documentation requested in the Letter Rogatory, and Defendant Robert M. Hollis is Director of the office responsible for providing assistance to international tribunals on behalf of the DOJ pursuant to 28 USC §1782(a).

34. Plaintiff has exhausted any administrative remedies that may be available to him. In light of Defendants’ response to the Letter Rogatory of March 5, 2009, and of Plaintiff’s pressing need for this documentation, any pursuit of administrative remedies will not provide a timely cure for the potential harm which Plaintiff may suffer. Accordingly, this complaint is ripe.

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<sup>5</sup> *Id.*

## V. CLAIMS

35. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 32 as if repeated and incorporated herein.

36. By failing to disclose and release the requested records, Defendants have violated Plaintiff's rights to FBI records under 5 USC §552.

37. Defendants have further violated their statutory obligations to Plaintiff, as well as to the international tribunal, under the Hague Convention as codified at 28 USC §1782(a).

38. Defendants have willfully and unreasonably delayed and refused to process Plaintiff's request for documents, thereby depriving Plaintiff of information required to establish a defense of the allegations made against him in Breslin et al v. McKevitt et al (QBD, 2001 No. 3918).

39. Defendants owed Plaintiff a duty, and owed a duty to a foreign court, to adjudicate and process Plaintiff's request, and have unreasonably and in bad faith failed to perform that duty. In so doing, Defendants have unlawfully interfered in Plaintiff's right to a defense.

WHEREFORE, Plaintiff hereby demands with respect to his stated claims, an order and judgment in his favor against the Defendants, jointly and severally, for the following relief:

- (a) that this Court assume jurisdiction over this matter;
- (b) that the Court declare that Defendants' refusal to disclose the records requested in the Letter Rogatory is unlawful;
- (c) Order Defendants immediately to make a full, adequate, and expedited search for the requested records;

- (d) Order Defendants to make the requested records available to Plaintiffs forthwith, and enjoin Defendants from withholding records; and
- (e) grant to Plaintiff those costs and reasonable attorneys' fees incurred by the Plaintiff in this action pursuant to the 5 USC § 552(a)(4)(E) and/or the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 *et seq*; and
- (f) enjoin Defendant from assessing fees or costs for the processing of documents responsive to the Letter Rogatory; and
- (g) grant such other and further relief as the Court may deem just and proper under the circumstances.

Dated: April 10, 2009  
Long Island City, New York

Respectfully submitted,

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